IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6408 OF 2005

Rashtriya Chemicals & Fertilizers Limited And Another ....Petitioners
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.Jamshed Lentin with Mrs.Swati Deshpande i/b M/s.M.S. Bodhanwala & Co. for the Petitioners.

Mrs.M.P. Thakur, AGP for Respondent Nos.1 to 4.

Mr.C.J. Sawant, Senior Counsel i/b Mr.Nitin Dhumal for Respondent No.5.

CORAM : F.I. REBELLO, &
S.J. VAZIFDAR, JJ.
DATED : 13TH FEBRUARY, 2007.

ORAL JUDGMENT (PER F.I. REBELLO, J.) :

1. Petitioner No.1 is a Government of India undertaking. It has factories at various places one such place being Thal, Taluka Alibaug, District Raigad. Petitioner No.2 is a shareholder. In or about 1978, about 259.83 hectares of land from the villages Thal, Boris-Gunjis and Navgaon, Taluka Alibaug, District Raigad was acquired by the State Government to enable Petitioner No.1 to set up their chemicals and fertilizers plant at Thal, Taluka Alibaug, District Raigad.

2. The State of Maharashtra has enacted various laws and has also issued Government resolutions for resolving the problems of the persons directly and indirectly affected due to acquisition of the lands for the purpose of certain projects. According to the Petitioners the gist of the above Government resolutions is that only one person per family of PAPs (Project Affected Persons) may be given priority in employment in Government service subject to such persons fulfilling the minimum educational requirements and fitness and other conditions. The Petitioners state that the Thal project of the Petitioners is not covered by various Acts. On account of acquisition of the lands, 385 families were affected from the aforesaid villages who were identified by various authorities. The project affected persons certificates (PAPs) have been issued by the authorities to such persons. The Petitioners state that during the period of 1979 to 1993, RCF has employed 615 PAPs against the certificates issued by the Collector. Apart from that, various local persons were engaged as contractors who have, in turn, engaged local residents as contract workers, a vast majority of whom are related to the PAP families. The Petitioners contend that they have complied with all

their obligations towards the PAPs under the Government resolutions/Circulars and have also given preference to local residents.

3. Inspite of the fact that the Petitioners have employed displaced families on account of acquisition the collector has been issuing certificates to the above persons from the same/different families in respect of one acquired plot of land. Such PAPs it is submitted, are not entitled for employment. The claims and proceedings filed by PAPs, were amicably settled by 1990. The settlements were arrived at on the condition that no fresh demands for the employment of PAPs would be entertained. Due to globalisation of Indian economy, there is a substantial reduction of subsidies given by the Government to the fertilizer industry and there is fierce competition from the private sector, the management of RCF was forced to adopt stringent measures including Voluntary Retirement Scheme (VRS). The company is not inducting any new employees and had to take steps to cut down the costs, so as to compete in the market.

4. Inspite of providing employment to more persons than what they had agreed to, agitations are being carried on by Respondent No.5. A situation was

created at one stage, where the Chief General Manager of RCF was abducted by some PAPs and was released only after the intervention by police and Central Industrial Security Force (CIFS) personnel employed at Thal plant. The agitators are also blocking the employees of RCF from going to the plant and threatening to block the goods carrying fertilizers from the plant for supply to various destinations. The Petitioners have suffered on account of such activities. The Petitioners fear for the safety of the plant as also the workers, both officers and workmen. The Respondent - State Government has failed to take any action. A meeting came to be held on 7.3.2005. The minutes were recorded and communicated to the Collector by a letter dated 25.3.2005. The minutes as recorded and communicated read as under :-

> "In all 385 number of families/khatedars were identified by the office as project affected persons (PAPs) due to land acquisition by RCF. Hence only 385 number of persons were supposed to be given employment as PAPs. However, we have offered employment to 615 number of PAPs as against 385 number of families/khatedars. In short we have given employment to almost two persons per

family/khatedar which is much more than agree to.

At RCF, Thal present manpower is excess than requirement, and as a result, we have introduced Voluntary Retirement Scheme to rationalize surplus manpower since August 2001.

From the year 1996, total 29 number of employees have died during the employment. But we are unable to offer the employment on compassionate ground also.

It was last submitted that in case requirement arises in future due to expansion of RCF, Thal the preference may be given to the PAPs, subject to the genuineness of the PAP certificate and also as per their qualification, experience and suitability."

5. The Petitioners by the present Petition have prayed for various declarations including that several enactments as stated in prayer clause (a) are not applicable to Thal project. For a further declaration that they have complied with all their obligations and

decisions taken at the meeting dated 20.12.1978, as also a declaration that Respondent No.3 ought not to have issued the certificates to the persons over and above the 385 project affects families in respect of the lands admeasuring 259.83 hectares acquired for Thal plant. Various other reliefs are sought for including protection for the Petitioners plant, machinery and personnel.

6. A reply has been filed by the District Resettlement Officer. It is stated that the company unanimously agreed that the company will provide employment to one member each, from 385 project affected families. The employment was to be provided within a span of 2 to 3 years. It is pointed out that preferential order was also finalized which was as follows :-

(a) A person from the project affected family on account of land acquisition.

(b) A person from the joint family being a Pot Hissedar of the land acquired.

(c) Landless labourer affected by land acquisition.

(d) A local person from the area.

. It is stated that while giving the employment in the company of Petitioner No.1, the Petitioner company has not followed preferential order agreed by it before the Chief Minister of the State of Maharashtra. The Respondent - State therefore called on the Petitioner to disclose the details of the persons employed right from 1978 till date. PAP certificates, it is submitted, were issued in terms of the norms and the enactments in force. In the matter of law and enforcement, it is pointed out that the Collectorate and the police authorities have taken effective steps to maintain law and order situation in and around the project of Thal Fertilizer Plant and complete protection of the plant. An explanation was sought to be given to the abduction of the Chief General Manager of Petitioner No.1. The certificates issued by the office of the Collector, it is submitted are as per the statutory provisions.

7. Considering the controversy, in order to find out whether the employment had been given to project affected persons by an order dated 23.11.2006, we had appointed Justice A.B. Palkar (Retd.) of this Court,

as a one man commission to submit a report in terms of the Reference, after hearing all the parties affected and who were before this Court. The terms of the Reference were as under :-

1). Whether the Petitioner (1) has employed 385 project affected persons ;

2). Whether the Collector has issued certificates to more than one member of the 385 project affected families and if so, how many ;

3). How many project affected persons are employed by Petitioner No.1 ;

4). Whether the Collector has issued certificates to any one not covered in the originally identified 385 families ; and

5). Whether the Collector has issued certificates without supporting documents and if so, how many in number.

8. The report has been submitted on 11.1.2007. The copies of the report were made available to the

parties. Earlier Respondent No.5 was allowed to participate in the proceeding before the Commissioner. However, it appears that on 4.11.2006 an order was passed by this Court, that the earlier order of this Court does not envisage participation beyond the Collector and the Petitioners. Respondent No.5 who were absent on the day the order was passed, chose not to file any review against the said order. The order of this Court dated 23.2.2006, clearly set out 'that all the parties affected who are before this Court be heard'.

. The Commissioner in its findings has recorded that out of 385 original khatedars, 376 khatedars were given employment, nine others were given employment based on affidavit of the original land holders, that no family members was eligible and the employment may be given to the said persons. Apart from that, another 198 members of the said families have also been employed, thus making a total of 593 employees. Apart from that 22 others were also given employment as their lands subsequently had been taken for the purpose of road widening project. In all 615 persons have been employed.

. In so far as the second point is concerned,

the learned Commissioner recorded a finding, that the Collector has issued the certificates to more than one person against each of the project affected family. The agreement was to restrict PAP certificates to 385 persons.

. So far as issue No.3 is concerned, we have already set out the figures. As per the evidence recorded by the Commissioner, 593 persons have been employed by RCF on the basis of PAP certificates and even if nine persons are excluded, the number will be 584.

. In so far as issue No.4 is concerned, a finding was recorded that there was no material placed on record to show that the certificates were issued to the persons who were not connected with 385 families although more number of certificates were issued. Further a finding was recorded that the District Rehabilitation Officer admitted that in the case of 108 families more than one certificate was issued.

. In answer to last issue, it was held that the certificates were issued not on the basis of the supporting documents. A statement has been made before this Court by Smt.Gaikar, that the Collectorate

office was making enquiries against the erring officer and was in the process of cancelling the certificates which could not be given Mr.Garud before the Commission could not make statement whether any certificate has been cancelled. The certificates were issued on the basis of the list provided by the S.L.A.O. and the list given by the local M.L.A. and no supporting evidence was produced.

9. The report was made available to all the parties. The grievance of the learned counsel for Respondent No.5, was that they were not allowed to participate before the Commission. From the order of the Commission, we find that until the order passed by this Court on 14.11.2006, they were allowed to participate but were not allowed to participate thereafter. We have pointed out that Respondent No.5 took no steps to apply for recalling the order dated 14.11.2006. We have however considered the report and material considered by the Commission and in the light of that we reject the contention on behalf of Respondent No.5 that the report of the commission should be set aside. We have noted that the Commission considered the documentary evidence produced by the Petitioners in support of their contentions. They have provided with employment, to

385 families. A further finding of fact has been recorded that 615 families have been provided the employment of which atleast 593 families were from families of project affected persons. We find no reason to interfere or defer from the finding recorded by the Commission in the absence of any documentary evidence, placed before us showing otherwise. We therefore, accept the report of the Commission and all the findings as set out therein.

. It is thus clear that the Petitioners have complied with the agreement which they arrived at pursuant to the meeting which was held on 20.12.1979. This has been put in writing by the Petitioners and communicated to the Collector by a letter dated 25.3.2005.

10. Having said so, we are faced with a situation were on account of farmers displaced by projects and having lost their means of livelihood consequent on their lands being fully or partly acquired, social tensions are being created in the locality one of which is for priority in jobs. The rehabilitation package in the instant case was for 385 families, whether they be joint family or not. On passage of time and on separation of undivided families, each

branch of family it appears are seeking employment, consequent on the earning of the members of the joint family being not available to them. When one branch in an undivided family received employment, naturally there are other branches in the family which would be left out a job. The Petitioners really cannot be faulted as they have complied with their part of the agreement.

. The question really is, considering the Directive principles as set out in the constitution and more specifically Articles 39 and 43, where the State is enjoined within its economic capacity, to provide adequate means of livelihood and living wages, how does it meet this constitutional imperative in cases of displacement of families from their lands from which they earned their livelihood. Families are being displaced, on account of land acquisition, snatching away many a time their only source of livelihood. Instead of being provided adequate means of livelihood, they are being deprived of their only source of livelihood. No doubt the State does provide compensation for such deprivation. The reality however is, that such compensation on account of the erosion in the value of the rupee, increased cost of living, even if the entire capital is saved, is not

sufficient. The land which has been acquired most of the time had sustained these families for generations. Large industrial projects cause displacement of farmers and labourers from their only source of livelihood. It is true that it may not be open to this Court, even considering the right to life, to issue any directions to the State authorities to provide guaranteed employment to those displaced including to those whose cause is being espoused by Respondent No.5 in the Petition. This however, should be an eye opener to the State, policy makers and decision makers, that any policy which results in the families being displaced from the land for industrial projects or other projects, the State must fine tune the rehabilitation package, which apart from paying compensation for the lands acquired, will also as far as possible provide to such displaced families including agricultural labourers, preference for jobs in the industry that will come up. Needless to say that suitability will be a factor. However, considering that most of the time those displaced are illiterate or not trained for the jobs, the entrepreneurs including the State when it proposes to use the land to set up its own units ought to train and equip such persons. If industry in case of retrenchments or other circumstances, retrains

employees for other suitable jobs, such an exercise, perhaps is required to make the concept of life, guaranteed under Article 21 more meaningful. Let us hasten to add, that we do not mean that the State is unaware of these situations or that it is not taking steps. The State is bound to act in accordance with the preambular concepts of the constitution. We only emphasise that so much more has to be done. An enlightened state, committed to economic and social justice must articulate these preambular concepts. Various schemes at various levels for providing employment are being initiated. A more practical approach is required in the context of the problems faced by displaced persons.

11. Having said so, it must be held, on the facts of the case that the Petitioners have discharged their responsibilities which they had agreed to. The letter which we have earlier adverted to, also indicates that if in the future on account of expansion, recruitment is to be done, then preference will be given to the families of the project affected persons, subject to what is set out therein.

12. In the above context, we will now consider the reliefs as prayed. It will be not possible for

this Court to issue a writ or directions to restrain any persons who finds himself aggrieved, from exercising his right of peaceful demonstration as that right flows from the right to organize as also freedom of speech and expression. That however, does not mean, that it is open to any section of the citizens, to disobey lawful orders or the law and or to use means other than peaceful, to ventilate their grievance. A duty is cast on the citizens to adhere to the rule of law and to seek redressal by peaceful means. The right of peaceful protest is now a part of public law, to make authorities see the other point of view and then to effect changes in the law.

. The Petitioners however, are entitled to protection of their plant, machinery, vehicles and for the safety of their employees as also the contractors involved in work connected with the factory. The Respondent - State is duty bound to provide such protection. To contend that a situation arose in which the General Manager could be abducted is no answer. This would lead to anarchy. The Collector and the Police authorities in the area are duty bound to provide protection and to take steps to disperse unruling mobs or those who break the law by following due procedure.

13. In the light of the above, the following order :-

i). The Petitioners have complied with the obligations of providing employment to the 385 project affected families and or persons named by them and are not duty bound to provided any further guaranteed employment except to give preference in case more jobs are generated by expansion of the project to families of P.A.P’s, as set out in the letter dated 25.3.2005.

ii). The Collector of the District is directed to conduct an enquiry for the purpose of issuance of certificate to other than the 385 who were eligible. If the Collector comes to the finding, that 180 families have been issued more than one certificate, then in the certificates issued to second or third person in the same family, to record that one member has already been provided employment.

iii). If there be any law and order

situation, Respondent No.3 to seek assistance of the Collector and police authorities who will provide effective and immediate protection to the Petitioners, their employees and property and to see that no demonstration, or demonstrators gather atleast within 100 mtrs. of the entrance gate of the Petitioners' plant or the boundary of their property.

. Rule is made absolute in the above terms. There shall however be no order as to costs.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)

IN THE HIGH COURT OF JUDICATURE AT BOBBY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6408 OF 2005

DATE OF DECISION : 13TH FEBRUARY, 2007.

For Approval and Signature :

HON'BLE MR.JUSTICE F.I. REBELLO.

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?

2. To be referred to be Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?